

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

GOLDIE J. LORCH, on behalf of herself and
similarly situated employees,

Plaintiff,

v.

FIRST NATIONAL BANK OF
PENNSYLVANIA, N.A. and F.N.B.
CORPORATION

Defendants.

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: CIVIL ACTION
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: NO. 2:13-cv-0894
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**DECLARATION OF VINCENT J. MERSICH IN SUPPORT OF MOTION FOR
LEAVE TO AMEND**

I, Vincent J. Mersich, swear and affirm that the following is true and correct based on my own personal knowledge:

1. I am an attorney, duly authorized to practice before this Court and in the Commonwealth of Pennsylvania.

2. Along with my co-counsel Brendan Donelon, I represent Plaintiff Goldie Lorch and Opt-in Plaintiffs Elaine Ashman, Emily Glova, and Francine Valentine (collectively, “Plaintiffs”) in the above-captioned lawsuit against First National Bank of Pennsylvania, N.A. and F.N.B. Corporation (“Defendants”).

3. At the initial Case Management Conference in this case, the parties disclosed to the Court their agreement, via stipulation, to the conditional certification of a collective under the Fair Labor Standards Act (“FLSA”).

4. Further, Plaintiffs’ counsel disclosed to the Court Plaintiffs’ intention to file an amended complaint that asserts a similar cause of action under the Pennsylvania Minimum Wage Act (“PMWA”), on a class-wide basis pursuant to Rule 23 of the Federal Rules of Civil Procedure, if Defendants’ discovery responses supported such a claim (*i.e.*, if it appeared the elements for Rule 23 certification could be satisfied).

5. On May 29, 2014, on behalf of Plaintiffs and pursuant to this Court's Case Management Order (ECF Doc. No. 26), I served written discovery requests to Defendant related to certification of the FLSA Opt-in Class.

6. On July 28, 2014, Defendants served initial written responses to Plaintiffs' interrogatories, document requests, and requests for admission.

7. On or about August 1, 2014, Defendant produced some of the documents responsive to Plaintiffs' requests.

8. In early August, 2014, the parties conferred over agreeable dates for depositions of Goldie Lorch and the opt-in Plaintiffs.

9. Over the course of three days—specifically, August 14, 15, and 18—Defendants deposed Goldie Lorch and each of the opt-in Plaintiffs. I attended and participated in those depositions.

10. On August 19, 2014, I consulted with my co-counsel regarding the documents and interrogatory responses produced by Defendants. We concluded that, in our judgment, those documents and responses supported the assertion of a Rule 23 class action, under the Pennsylvania Minimum Wage Act ("PMWA"), for unpaid overtime.

11. Moreover, I consulted with my co-counsel regarding the deposition testimony in the Plaintiffs' depositions. Again, we concluded that, in our judgment, the deposition testimony supported the assertion of a class-wide PMWA claim for unpaid overtime.

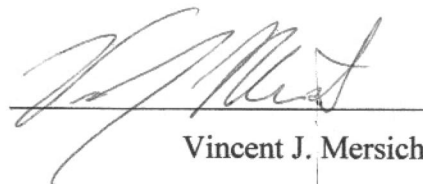
12. The same day, I wrote to Defendants' counsel via email, seeking their consent to file a First Amended Complaint to assert the above-described PMWA claim. That email is not attached to this declaration, because the same email contains confidential settlement discussions.

13. On September 16, 2014, I again emailed Defendants' counsel to request Defendants' consent to file a First Amended Complaint, and I attached the draft of the same. My September 16, 2014 email to Defendants' counsel is attached as Exhibit A.

14. In response, Defendants refused to consent to Plaintiffs' proposed First Amended Complaint.

Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury the foregoing to be true and correct.

Dated this 17th day of September, 2014.



Vincent J. Mersich

EXHIBIT A

Mersich, Vincent J.

From: Mersich, Vincent J. <vincent.mersich@mersichlaw.com>
Sent: Tuesday, September 16, 2014 4:06 PM
To: 'John J. Myers'; 'Joshua C. Vaughn'
Cc: Brendan Donelon (brendan@donelonpc.com)
Subject: Lorch v. FNB - First Amended Complaint
Attachments: Lorch v. FNB - Draft FAC.pdf

Counsel:

As we've previously explained, we intend to amend the Complaint to assert a Rule 23 class action claim under the Pennsylvania Minimum Wage Act. Our understanding is that Defendants do not consent to an amended complaint, necessitating a motion for leave to amend. Fed. R. Civ. Proc. 15(b). However, in an effort to avoid the cost and expense of that motion, we again request that Defendants consent to the filing of the FAC, which is attached.

Please let us know Defendants' position on this issue as soon as possible.

Thanks,

Vincent James Mersich
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